



Billing Code: 4333-15

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R2-ES-2015-N187; FXES11120200000F2-167-FF02ENEH00]

Final Environmental Impact Statement and Draft Record of Decision on the Southern Edwards Plateau Habitat Conservation Plan for Incidental Take of Nine Federally Listed Species in Central Texas

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, under the National Environmental Policy Act of 1969 (NEPA), make available the final environmental impact statement (EIS) and draft record of decision (ROD) analyzing the impacts of the issuance of an incidental take permit for implementation of the final Southern Edwards Plateau Habitat Conservation Plan (SEP HCP). Our decision is to issue a 30-year incidental take permit for implementation of the SEP HCP preferred alternative (described below), which authorizes incidental take of animal species listed pursuant to the Endangered Species

Act of 1973, as amended. As part of the SEP HCP, measures will be implemented to avoid, minimize, and mitigate impacts to offset impacts to the affected species.

DATES: We will finalize the ROD and a permit no sooner than 30 days after publication of this notice.

ADDRESSES: You may obtain copies of the final documents by going to *<http://www.fws.gov/southwest/es/AustinTexas/>*. Alternatively, you may obtain a compact disk with electronic copies of these documents by writing to Mr. Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, 10711 Burnet Road Suite 200, Austin TX 78758; by calling (512) 490-0057; or by faxing (512) 490-0974. For additional information about where to review documents, see “Reviewing Documents” under

SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT: Mr. Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758 or (512) 490-0057.

SUPPLEMENTARY INFORMATION: We, the Service, announce the availability of the final EIS and draft ROD, which we developed in compliance with the agency decision-making requirements of the NEPA, as well as the final SEP HCP as submitted by the City of San Antonio and Bexar County, Texas (Applicants). All alternatives have

been described in detail, evaluated, and analyzed in our November 2015 final EIS. The ROD documents the rationale for our decision.

Based on our review of the alternatives and their environmental consequences as described in our final EIS, we have selected the Proposed SEP HCP Alternative. The proposed action is to issue to the Applicants an incidental take permit (ITP) under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*, Act), that authorizes incidental take of nine endangered species (Covered Species): two birds - golden-cheeked warbler (*Setophaga* [=*Dendroica*] *chrysoparia*, GCWA) and black-capped vireo (*Vireo atricapilla*, BCVI), and seven karst invertebrates (collectively the Covered Karst Invertebrates) - *R. infernalis* (no common name), *Rhadine exilis* (no common name) Helotes mold beetle (*Batrisodes venyivi*), Government Canyon Bat Cave spider (*Neoleptoneta microps*), Madla cave meshweaver (*Cicurina madla*), Government Canyon Bat Cave meshweaver (*C. venii*). The term of the permit is 30 years (2015-2045).

The Applicants will implement minimization and mitigation measures to offset impacts to the Covered Species according to their SEP HCP. The minimization and mitigation measures include, but are not limited to: restricting activities to avoid the two bird's breeding seasons, implementing oak wilt prevention techniques, conducting extensive karst invertebrate surveys prior to any activity in karst zones, preserving habitat in perpetuity for all Covered Species, and managing and monitoring preserves in perpetuity.

Background

The Applicants have applied for an incidental take permit (TE48571B-0, ITP) under the Act, that would authorize incidental take of nine Covered Species in all, or portions, of seven Texas counties, and would be in effect for a period of 30 years. The proposed incidental take of the Covered Species would occur from lawful, non-federal activities including: public or private land development projects; construction, maintenance, and/or improvement of roads, bridges, and other transportation infrastructure; and installation and/or maintenance of utility infrastructure (Covered Activities). The SEP HCP includes a 7-county area: Bandera, Bexar, Blanco, Comal, Kendall, Kerr, and Medina counties. Incidental take coverage will: 1) only be offered to Participants in the jurisdictions of Bexar County and the City of San Antonio, including current and future portions of the City's extra-territorial jurisdiction (except where the City of San Antonio is within Comal County and 2) be provided within any SEP HCP preserves located in the 7-county plan area. The final EIS considers the direct, indirect, and cumulative effects of implementation of the HCP, including the measures that will be implemented to minimize and mitigate such impacts to the maximum extent practicable.

The Secretary of the Interior has delegated to the Service the authority to approve or deny an ITP in accordance with the Act. To act on the Applicant's permit application, we must determine that the HCP meets the issuance criteria specified in the Code of Federal Regulations (CFR) at 50 CFR 17.22 and 17.32. The issuance of an ITP is a federal action subject to NEPA compliance, including the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1500-1508).

On December 19, 2014, we issued a draft EIS and requested public comment on our evaluation of the potential impacts associated with issuance of an ITP for implementation of the SEP HCP and to evaluate alternatives (79 FR 75830). We included public comments and responses associated with the draft EIS and draft HCP in the final EIS.

Purpose and Need

The purpose of the section 10(a)(1)(B) permit is to authorize incidental take associated with the Covered Activities described above. We identified key issues and relevant factors through public scoping and meetings, working with other agencies and groups, and reviewing comments from the public. We received responses from 1 federal agency, 1 tribe, and 110 other non-governmental agencies (NGOs) and individuals. The Environmental Protection Agency had comments on several sections of the draft EIS including air quality and the need for a Construction Emissions Mitigation Plan, a lack of analysis regarding environmental justice, and lack of a review by potentially affected tribes. The Caddo Nation of Oklahoma stated the project would not impact sights of interest to the Caddo Nation. Comments from individuals and NGOs included both support and concern for the HCP and the EIS selection of the preferred alternative. We believe these comments are addressed and reasonably accommodated in the final documents.

Alternatives

We considered five alternatives in the EIS.

No Action Alternative: Under the No Action Alternative, the Service would not issue an incidental take permit for the SEP HCP.

Proposed SEP HCP Alternative: Our preferred alternative is the proposed HCP with a 30-year term, as described in the final EIS, which provides for the issuance of an ITP to the Applicants for incidental take of the Covered Species that may occur as a result of Covered Activities. This alternative includes a number of measures to avoid, minimize, and mitigate impacts to the Covered Species, including over 30,000 acres of preserves for the Covered Species, avoiding the bird's breeding seasons to reduce direct impacts, and conducting extensive karst feature surveys to minimize direct impacts to karst invertebrates. This alternative assumes 50 percent of the development activities requiring an ITP for the Covered Species over the next 30 years will participate in the SEP-HCP, which represents 50 percent of the projected GCWA and BCVI habitat loss and 20 percent of the loss of potential habitat supporting the Covered Karst Invertebrates resulting from development within the Enrollment Area over the next 30 years.

10% Participation Alternative: This alternative assumes 10 percent of the development activities requiring an ITP for the Covered Species over the next 30 years will participate in the SEP HCP. The incidental take request represents 10 percent of the projected GCWA and BCVI habitat loss and 10 percent of the loss of potential habitat for the Covered Karst Invertebrates resulting from development within the Enrollment Area over the next 30 years.

Single-County Alternative: The Single-County Alternative proposes the preserve system will be located within Bexar County or within 10 miles of the Bexar County border. This alternative proposes the same amount of take for the Covered Species as the

Proposed SEP HCP Alternative; however, it proposes one-half of the preserve for GCWA and BCVI and greater participation fees.

Increased Mitigation Alternative – The Increased Mitigation Alternative incorporates the same mitigation for the BCVI, higher proposed mitigation for the GCWA, and two times the required amount of preserve needed to achieve conservation baselines for the Covered Karst Invertebrates than that of the Proposed SEP HCP Alternative. Additionally, this alternative calls for 60 percent of the GCWA preserve within Bexar County and/or within 5 miles of the county border. Expected participation is the same as the Proposed SEP HCP Alternative.

Decision

We intend to issue an ITP allowing the Applicants to implement the Proposed SEP HCP Alternative. Our decision is based on a thorough review of the alternatives and their environmental consequences. Implementation of this decision entails the issuance of the ITP by the Service and full implementation of the HCP by the Applicants, including minimization and mitigation measures, monitoring and adaptive management, and complying with all terms and conditions in the permit.

Rationale for Decision

We have selected the Proposed SEP HCP Alternative for implementation based on multiple environmental and social factors, including potential impacts and benefits to Covered Species and their habitats; the extent and effectiveness of avoidance, minimization, and mitigation measures; and social and economic considerations.

We did not choose the No Action Alternative, because compliance with the Act will continue to occur on an individual basis through project-specific consultations with the Service, permitting actions will occur at the level and scope of an individual project, and mitigation requirements will be individually negotiated with the Service. As compared with the No Action Alternative, the Proposed SEP HCP Alternative provides for a more comprehensive and efficient approach to compliance with the Act and will provide larger, more contiguous preserves providing for more robust buffering against threats.

We did not choose the 10% Participation Alternative because we believe that participation in the SEP HCP will exceed the requested level of authorized take well before the 30 year time period of the proposed permit. The result of early expiration of the permit would result in either a major amendment to the SEP HCP, expiration of the permit and a return to the No Action Alternative status quo, or starting a new regional HCP planning process. All of these options undermine the expected efficiencies and increased compliance with the Act expected as part of the Proposed SEP HCP Alternative.

We did not choose the Single County Alternative because we believe the proposed mitigation compared to the amount of requested take is insufficient to meet the issuance criteria (described below) for an ITP. In particular, the criteria requiring an HCP minimize and mitigate to the maximum extent practicable any impacts from proposed takings.

We did not choose the Increased Mitigation Alternative because the high cost to participate in the plan would likely decrease participation in the plan causing individuals to come to the Service for individual permits, similar to the No Action Alternative.

In order to issue an ITP we must ascertain that the HCP meets issuance criteria as set forth in 16 U.S.C. 1539(a)(2)(A) and (B). We have made that determination based on the criteria summarized below.

1. *The taking will be incidental.* We find that take will be incidental to otherwise lawful activities, including: public or private land development projects; construction, maintenance, and/or improvement of roads, bridges, and other transportation infrastructure; and installation and/or maintenance of utility infrastructure.
2. *The applicants will, to the maximum extent practicable, minimize and mitigate the impacts of such takings.* The Applicant's have developed and are committed to implementing a wide variety of conservation measures intended to minimize and mitigate the impacts of incidental taking that may result from the Covered Activities.
3. *The applicants will develop an HCP and ensure that adequate funding for the HCP will be provided.* The Applicants have developed an HCP, which includes a detailed estimate of the costs of implementing the SEP HCP (see Chapter 11 of the HCP). The funding necessary to pay for implementing the SEP HCP will come mostly from participation fees and public funding sources.
4. *The taking will not appreciably reduce the likelihood of survival and recovery of any listed species in the wild.* As the federal action agency considering whether to issue an ITP to the Applicants, we have reviewed the proposed action under section 7 of the Act. Our biological opinion, dated November 20, 2015, concluded that issuance of the ITP

will not jeopardize the continued existence of the Covered Species in the wild. No areas designated as critical habitat will be adversely modified. The biological opinion also analyzes other listed species within the planning area and concludes that the direct and indirect effect of the issuance of the ITP will not appreciably reduce the likelihood of survival and recovery of other listed species or destroy or adversely modify any designated critical habitat.

5. The applicants agree to implement other measures that the Service requires as being necessary or appropriate for the purposes of the HCP. We have assisted the Applicants in the development of the SEP HCP, commented on draft documents, participated in numerous meetings, and worked closely with them throughout the development of the HCP, so conservation of Covered Species would be assured and recovery would not be precluded by the Covered Activities. The SEP HCP incorporates our recommendations for minimization and mitigation of impacts, as well as steps to monitor the effects of the HCP and ensure success. Annual monitoring, as well as coordination and reporting mechanisms, have been designed to ensure that changes in the conservation measures can be implemented if proposed measures prove ineffective (adaptive management).

We have determined that the Proposed SEP HCP Alternative best balances the protection and management of habitat for Covered Species while providing an efficient means for compliance with the Act for the Covered Species in the permit area. Considerations used in this decision include whether (1) mitigation will benefit the Covered Species, (2) adaptive management of the conservation measures will ensure that the goals and objectives of the HCP are realized, (3) conservation measures will protect and enhance habitat, (4) mitigation measures for the Covered Species will fully offset

anticipated impacts to species and provide recovery opportunities, and (5) the HCP is consistent with the Covered Species' recovery plans, where they exist.

A final permit decision will be made no sooner than 30 days after the publication of this notice of availability and completion of the record of decision.

Reviewing Documents

You may obtain copies of the final EIS, draft ROD, and final HCP by going to <http://www.fws.gov/southwest/es/AustinTexas/>. Alternatively, you may obtain a compact disk with electronic copies of these documents by writing to Mr. Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, 10711 Burnet Road Suite 200, Austin TX 78758; by calling (512) 490-0057; or by faxing (512) 490-0974. Copies of the final EIS and final HCP are also available for public inspection and review at the following locations (by appointment only):

- Department of the Interior, Natural Resources Library, 1849 C St. NW., Washington, DC 20240.
- U.S. Fish and Wildlife Service, 500 Gold Avenue SW., Room 6034, Albuquerque, NM 87102.
- U.S. Fish and Wildlife Service, 10711 Burnet Road Suite 200, Austin, TX 78758.

Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 6034, Albuquerque, NM 87103.

Authority

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 et seq.) and its implementing regulations (50 CFR 17.22 and 17.32), and the National Environmental Policy Act (42 U.S.C. 4321 et seq.) and its implementing regulations (40 CFR part 1506.6).

Benjamin N. Tuggle
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